

1 JUDGE STEINBERG: Okay. So voir dire is over.

2 MR. HONIG: Voir dire is -- I have no more voir  
3 dire.

4 JUDGE STEINBERG: Okay.

5 MR. HONIG: I have no objection to paragraph 1 or 2.  
6 I would move to strike paragraph 3. This -- similar  
7 statements concerning the nexus between the Church's theology  
8 and its views on race came in as the opinion of Reverend  
9 Bohlman if I remember. But Mr. Stortz is not a pastor or  
10 theologian. And therefore even as opinion I think this, this  
11 is not competent testimony and, and certainly isn't as, as  
12 good an opinion as Reverend Bohlman had had. And therefore I  
13 don't think it adds anything to the record and should be  
14 stricken.

15 MS. SCHMELTZER: Well, Your Honor, it says based on  
16 his 19 years of experience. It is opinion. And I think that  
17 this is the kind of information that Mr. Honig can cross-  
18 examine him on. But I think that for the same reasons that  
19 Mr. Bohlman's testimony -- Reverend Bohlman's testimony was  
20 accepted this should be received as well.

21 JUDGE STEINBERG: Mr. Zauner.

22 MR. ZAUNER: Your Honor, obviously Mr. Stortz is  
23 competent to testify as to his own opinion.

24 JUDGE STEINBERG: Okay. This -- the objection is  
25 going to be overruled. But it's clear to me that this is his

1 belief. And he says in the second paragraph my understanding  
2 and belief is. So whether his understanding is correct or  
3 not, perhaps you can cross-examine on Lutheran theology.

4 But it's -- but this is -- paragraph 3 is basically  
5 going to be received for state of mind purposes only. This  
6 is -- that's the only -- he -- that's the only thing he's  
7 competent to testify is what's inside of his head in terms of  
8 material like this. And you know, my feeling about statements  
9 like this I think I expressed conclusory statements like  
10 you're obviously going to object to paragraph 4, right?

11 MR. HONIG: Yup.

12 JUDGE STEINBERG: Okay. Because it stresses  
13 conclusions, etc., etc. My opinion about that is that's his  
14 state of mind. And he's entitled to a state of mind. And  
15 you're entitled to test his state of mind. But I'm certainly  
16 not going to conclude in findings and conclusions -- this is  
17 with respect to any witness, not just this witness. And, and  
18 I'm certainly not going to conclude that this, this station  
19 has never discriminated because Mr. Stortz said in paragraph 4  
20 they never discriminated. I mean you say you don't have to  
21 worry about me basing my conclusion on that. My conclusions  
22 are going to be based on the record in its entirety and, and  
23 not materials such as in paragraph 4.

24 And as I said yesterday, everybody puts, you know,  
25 I, I didn't check the yes box, you know, when I checked the

1 yes box in the financial qualifications section, I believed I  
2 was financially qualified. Motion to strike. Conclusory.  
3 Who cares? I mean basically so go on and -- so that objection  
4 is overruled. So go on to paragraph 4, and you know my ruling  
5 already.

6 MR. HONIG: Forgive me. I just thought that was,  
7 that was funny.

8 JUDGE STEINBERG: It was.

9 MR. HONIG: Okay.

10 JUDGE STEINBERG: But it's true.

11 MR. HONIG: Yeah. You --

12 JUDGE STEINBERG: And --

13 MR. HONIG: -- the -- and I want to make it clear  
14 also that I understand your ruling. But I, I have to assume  
15 nonetheless that any reviewing tribunal can always take a look  
16 at this and, and may not have the same approach to it. So I  
17 still have to --

18 JUDGE STEINBERG: Of course.

19 MR. HONIG: -- yeah.

20 JUDGE STEINBERG: I know.

21 MR. HONIG: I still have to object. So for that  
22 purpose then, understanding your ruling, I still have to  
23 object to paragraph 4 for the same reason.

24 JUDGE STEINBERG: Okay, I don't, I don't need any  
25 discussion. Paragraph 4 again is admitted just for state of

1 mind purposes.

2 (Pause.)

3 MR. HONIG: Now turning to page 6, paragraph 11, the  
4 statements, "The stations continue to struggle financially  
5 throughout the license term, however, despite the acceptance  
6 of advertisings on the FM. See financial statements attached  
7 as attachment 5. Because of their financial problems..." --  
8 right up to that word "problems" I, I would object. The  
9 witness hasn't established his, the, the basis for, for this.  
10 Struggle financially is a relative term. Every licensee  
11 thinks they're struggling financially. The financial  
12 statements you can, you know, I've looked at them. And I  
13 can't draw a nexus between that that findings could be made  
14 compared to other stations or compared to what one reasonably  
15 could do that there was no discretionary budget to send mail  
16 out to job sources and so forth.

17 So I don't think that it, it's proper direct  
18 examination. Findings can't be made because it's so vague.  
19 And as to this point their burden hasn't been carried. It  
20 should be stricken.

21 JUDGE STEINBERG: Specifically which language?

22 MR. HONIG: The language which ends --

23 JUDGE STEINBERG: Beginning, "The stations continue  
24 to struggle financially."

25 MR. HONIG: Yeah, that's right. And it ends at the

1 word "problems" in the middle of the next sentence.

2 JUDGE STEINBERG: Oh, I see. So it's "the station"  
3 through "because of their financial problems."

4 MR. HONIG: Then you've turned the "the" into a  
5 capital "the".

6 MS. SCHMELTZER: Your Honor --

7 JUDGE STEINBERG: Let me just --

8 (Pause.)

9 JUDGE STEINBERG: Mrs. Schmeltzer.

10 MS. SCHMELTZER: Okay. Number one, the statement is  
11 certainly supported. It's supported not only by Mr. Stortz's  
12 testimony on it. And he's here to answer questions. But also  
13 by the financial statements which we put in, and Mr. Honig is  
14 free to cross-examine on that. So this statement is certainly  
15 amply supported.

16 Secondly, striking the first phrase in the, in the  
17 third sentence, striking the words "because of their financial  
18 problems" would turn that sentence completely on its head. We  
19 certainly could not agree to say the stations -- I mean it --  
20 we need that predicate for what follows in that sentence.

21 MR. ZAUNER: Your Honor, I have a question here.  
22 And that is whether the objected to statements are being  
23 offered for the truth of the matter asserted or they're being  
24 offered to show Mr. Stortz's state of mind while he was at the  
25 station during this period of time.

1 MS. SCHMELTZER: They're offered for the truth of  
2 the matter asserted therein. They are the financial  
3 statements --

4 JUDGE STEINBERG: Not the financial -- not  
5 attachment 5 but the, the sentence, the sentence, the first --

6 MR. ZAUNER: That's correct.

7 JUDGE STEINBERG: Yeah. I mean attachment 5 or, or  
8 financial statements. And obviously they, you know, they say  
9 what they say. So you know, so that's offered for the truth  
10 of the matters, correct?

11 MS. SCHMELTZER: Yes.

12 JUDGE STEINBERG: The question is the language in  
13 paragraph 11, "The stations continued to struggle  
14 financially..." etc. Is that --

15 MS. SCHMELTZER: That's Mr. Stortz's statement.

16 JUDGE STEINBERG: Okay. And that's the purpose for  
17 which that's being offered?

18 MS. SCHMELTZER: Yes.

19 JUDGE STEINBERG: That particular language.

20 MS. SCHMELTZER: That's correct.

21 JUDGE STEINBERG: Okay. With that clarification.

22 MR. ZAUNER: One second, Your Honor.

23 MS. LADEN: Your, Your Honor, just one second.

24 MS. SCHMELTZER: Your Honor, I mean it's supported  
25 by the statement. So actually I think it should be admitted

1 for the truth of the matter asserted. Because it is supported  
2 by the statement.

3 MR. HONIG: Your Honor, I wouldn't object to it, to  
4 the financial statements coming in for the truth of the  
5 financial statements. I don't know if they're audited or not,  
6 but I can test that.

7 MR. ZAUNER: Well, but --

8 JUDGE STEINBERG: Wait. Let, let Mr. Honig --

9 MR. ZAUNER: I'm sorry.

10 JUDGE STEINBERG: -- finish, then we'll get to Mr.  
11 Zauner. We're kind of going out of turn.

12 MR. HONIG: But, but the -- but I think Mr. Zauner  
13 was on the right track. The rest of it is at best opinion.  
14 I'd have to object to it coming in just for the same reason  
15 that I objected to paragraphs 3 and 4 that it's going to come  
16 in as opinion.

17 MS. SCHMELTZER: Well, you know, Mr. Honig can argue  
18 the weight of this later in his findings. And he can argue as  
19 to what was testified to. But it seems to me it ought to come  
20 in.

21 JUDGE STEINBERG: Mr. Zauner.

22 MR. ZAUNER: Your Honor, we would not object to the,  
23 to the first sentence coming in with clarification that  
24 counsel has provided. We would object to the financial  
25 statements which are in attachment 5 on the grounds that they

1 are hearsay and that the, the auditor who prepared the  
2 statements is not available here for cross-examination, and  
3 this witness is not competent to sponsor those exhibits.

4 JUDGE STEINBERG: I'm going to overrule Mr. Honig's  
5 objection. I'm going to overrule that in essence was a Bureau  
6 objection. If the Bureau wanted to test the financial  
7 statements, they should have noticed the individual, noticed  
8 for cross-examination the unknown individual that prepared  
9 them. You can, you can through cross-examination establish or  
10 attempt to establish what was meant by struggle financially  
11 and because of their financial problems. But I think that  
12 this is part of the, the story that the Church is telling in,  
13 in defense of itself.

14 Let me just say I don't -- I'm not using the word  
15 "story" in any negative sense. It's just part of the, the  
16 total picture.

17 (Pause.)

18 MR. HONIG: On page 11, the bottom of footnote 2,  
19 the last sentence is not proper direct examination. It isn't  
20 appropriate and it's prejudicial.

21 MS. SCHMELTZER: I don't see how that's not  
22 appropriate direct testimony. That is his testimony. And  
23 it's not prejudicial in any sense. Mr. Honig is free to  
24 cross-examine on that. I think that's a very important  
25 sentence, Your Honor.



1 JUDGE STEINBERG: Mr. Zauner?

2 MR. ZAUNER: We have no objection to that statement  
3 being included. It certainly isn't going to prejudice  
4 anybody's case.

5 JUDGE STEINBERG: Objection is overruled. You may  
6 want to even convert that into an admission that something was  
7 offensive to somebody.

8 MR. HONIG: Well, all right. I've made the  
9 objection.

10 On page 12, footnote 3 -- oh, no. No, I'm not going  
11 to object to that. I'm sorry. I, I can cross-examine on  
12 that. On page 13 --

13 (Pause. Asides.)

14 MR. HONIG: The sentence that on paragraph 20 that  
15 states, "In this regard, it should be noted that the station  
16 sometimes exceeded the FCC's 50 percent parody guidelines."  
17 That's a legal argument. The 50 percent parody guidelines  
18 are, are a legal concept. Whether a station exceeds them or  
19 not is something that should be contained in findings and, and  
20 isn't the proper, and it isn't the proper purpose of this  
21 witness to, to make legal arguments in, in his direct  
22 testimony.

23 MS. SCHMELTZER: Your Honor, this is not a legal  
24 argument. It's a factual argument that is supported by  
25 attachment 12. And it's a -- it just simply is a predicate

1 for financing.

2 MR. HONIG: I'll move to strike attachment 12 in a  
3 moment.

4 (Asides.)

5 JUDGE STEINBERG: Mr. Zauner.

6 MR. ZAUNER: One second, Your Honor.

7 (Asides.)

8 MR. ZAUNER: Your Honor, I, I think that, that this  
9 information is all right. We have the basic data against  
10 which we can check the accuracy of the statements. And I  
11 believe the Court with your, on his prior rulings that, that  
12 this would not bind us in, in proposed findings and  
13 conclusions or bind you in your initial decision should the  
14 underlying facts prove something different than what is stated  
15 in the testimony. And given that consideration, I don't see  
16 why it needs to be stricken.

17 JUDGE STEINBERG: Well, my feeling is if the, if  
18 the, the statement in the, the text is, if it's supported by  
19 the attachment, fine. If it's not, somebody will point it  
20 out. So I'll overrule the objection.

21 And I think that whether a station exceeds or  
22 doesn't exceed 50 percent of parody, the consequences of that  
23 are a legal argument. But the numbers and statistics are  
24 factual. And he's not making any legal conclusion I don't  
25 think from just -- he's just saying it should be noted they

1 sometimes exceeded. Which means they sometimes didn't. Then  
2 he goes on to explain why they didn't at times. But I'm, I'm  
3 overruling the objection.

4 MR. HONIG: I'd also like at this point, this is  
5 where it's referenced to, to move to strike I guess it's tab  
6 12 which is various calculations apparently prepared by  
7 counsel --

8 JUDGE STEINBERG: Why don't you just ask the witness  
9 who prepared it and when and if he had anything to do with it.

10 MR. HONIG: Well, no. But I, I don't think it  
11 should go in at all. And the reason that I'm relying on is,  
12 is based to the best evidence rule. The proper source for  
13 findings on the, on what was in the Form 395s each year is the  
14 Form 395s themselves. And NAACP Exhibit 24 which I intend to  
15 offer contains all those Form 395s themselves as the station  
16 submitted them to the Commission. So we've got the best  
17 evidence that's going to come in. So this, this exhibit isn't  
18 needed and, and will clutter the record. And there's no need  
19 for second best evidence when you've got best evidence.

20 JUDGE STEINBERG: Well, I'm not -- I'm going to  
21 overrule the objection. And I -- it's, it's --

22 UNIDENTIFIED SPEAKER: It's inconsistent --

23 JUDGE STEINBERG: You can, you can check -- it would  
24 seem to me it would, it would be wonderful to have this  
25 summary to rely on rather than have to go through all the

1 395s. And if -- not that you won't go through the 395s to, to  
2 ensure that the summary is accurate. If there's a conflict  
3 the 395s will govern.

4 MR. HONIG: One thing it's not complete. Because it  
5 just is the --

6 JUDGE STEINBERG: Well --

7 MR. HONIG: -- minorities.

8 JUDGE STEINBERG: It's what?

9 MR. HONIG: It's not complete. It doesn't say for  
10 job positions. It doesn't say --

11 JUDGE STEINBERG: Well --

12 MR. HONIG: -- African Americans.

13 JUDGE STEINBERG: -- it's -- then it's, then it's --  
14 you can write your findings that way, and they can write their  
15 findings the other way. But I, I think numbers like this are  
16 important. I just don't see any reason to, to strike it. I  
17 mean we have enough paper. Another three pages aren't going  
18 to make any difference.

19 MS. SCHMELTZER: I would just reflect, Mr. Honig, in  
20 the notes it does say, "All minorities are black except one  
21 Hispanic employed during the..." -- it does reference that in  
22 the notes if you will look.

23 I have, I have no objection to Mr. Honig's proposed  
24 Exhibit 24 except that it does not include the 1990 395, and  
25 it should because the payroll period at issue --

1 JUDGE STEINBERG: Was within the renewal period?

2 MS. SCHMELTZER: -- was the last 2 weeks of January.  
3 It was within the renewal period. And we have made copies of  
4 that 1990 395.

5 JUDGE STEINBERG: Well, we can, we can get to it.  
6 No, I think -- I, I do believe that the 395s belong in the  
7 record.

8 MR. HONIG: Yeah. No, I agree. And, and if Ms.  
9 Schmeltzer wants to move the 1990 one into evidence, I'm going  
10 to concur.

11 JUDGE STEINBERG: Okay. So let's, let's go on.

12 MR. HONIG: I'm going to strike -- I'm going to move  
13 to, move to strike -- sorry, Judge. Forgot which side of the  
14 bench I'm on. Paragraph 23 on the basis that it's at best the  
15 witness's opinion and, and certainly couldn't be offered for  
16 any purpose other than, other than the witness's opinion. And  
17 the last sentence for the same reason that I sought to strike  
18 the last sentence of, of footnote 2.

19 JUDGE STEINBERG: For the reasons that I expressed  
20 earlier with respect to I think it was which one, paragraph 4,  
21 I'm going to overrule the objection. And I, I would think  
22 that the last sentence you would want in there. Because it  
23 seems to be an admission that something that should have been  
24 done earlier wasn't done. You could read it that way too.

25 MR. HONIG: Could.

1 JUDGE STEINBERG: And so maybe I'm doing you a  
2 favor.

3 MR. HONIG: Well --

4 JUDGE STEINBERG: In that regard. But anyway, you  
5 have the ruling.

6 MR. HONIG: Yup.

7 JUDGE STEINBERG: And as I said before, this is  
8 his -- at the most this is admitted for state of mind  
9 purposes. And I'm going to draw my conclusions from, not from  
10 paragraph 4 or paragraph 23 but from the overall record.

11 MR. HONIG: Finally, on page 25, the sentence -- the  
12 last two sentences of paragraph 41, "Although the information  
13 concerning total hires submitted to the FCC in the license  
14 renewal applications may not have been fully accurate, any  
15 inaccuracies were entirely unintentional and the result of a  
16 good faith misinterpretation by the stations. There was  
17 certainly no intent to deceive the FCC on these or any  
18 matters." That's global findings type language that, that  
19 isn't appropriate direct testimony. I move to strike it.

20 MS. SCHMELTZER: Well, I think findings type  
21 language is appropriate. It's his state of mind. It's -- Ms.  
22 Zika had testimony somewhat along these lines that no one  
23 moved to strike. I think it's relevant.

24 MR. HONIG: I think I did --

25 JUDGE STEINBERG: Well, I, I -- well, yeah. I --

1 I'll receive it for state of mind purposes only. And again,  
2 this is paragraph, same, same ruling as with respect to  
3 paragraph 4 and paragraph 23. And you know, these are  
4 conclusory matters that, that well, I've said enough about.  
5 Mr. Zauner.

6 MR. ZAUNER: Yes, Your Honor. On page 13, paragraph  
7 19, there's a sentence in that paragraph speaking about all  
8 what are client letters which says, "Nothing in them appear to  
9 alert the stations to any particular deficiency..." etc. We  
10 feel --

11 JUDGE STEINBERG: That one sentence?

12 MR. ZAUNER: The Bureau notes, yes, that, that the  
13 letters would speak for themselves. But we would have no  
14 objection to it coming in if it is strictly for the purposes  
15 of state of mind.

16 MS. SCHMELTZER: It is state of mind.

17 JUDGE STEINBERG: Okay. So that -- with that  
18 understanding that's, that that sentence is state of mind.

19 MR. ZAUNER: I believe that's all we have, Your  
20 Honor.

21 JUDGE STEINBERG: Okay. Church Exhibit 4 is  
22 received. Let's take a break until 11:30.

23 (Whereupon, the document referred to  
24 as Church Exhibit No. 4 was received  
25 into evidence.)

1 (Whereupon, a short recess was taken.)

2 JUDGE STEINBERG: -- Mr. Honig.

3 MR. HONIG: Mr. Stortz, I'd like to start by asking  
4 you to state in your own words, be as expansive as you'd like,  
5 the steps that you believe, the specific day-to-day steps that  
6 you believe KFUE took during the license term to recruit  
7 African Americans for employment.

8 MS. SCHMELTZER: Your Honor, I don't think that the  
9 HDO is specifically related to African Americans. I think the  
10 language is minorities.

11 MR. HONIG: But that's all I'm asking about.

12 JUDGE STEINBERG: Mr. Honig can ask whatever he  
13 wants. That's a relevant question. And so the objection is  
14 overruled.

15 WITNESS: How did we recruit African Americans  
16 during the license period?

17 MR. HONIG: Yes, that's the question --

18 JUDGE STEINBERG: If you want to break it down in  
19 convenient --

20 WITNESS: Segments.

21 JUDGE STEINBERG: -- periodic segments, go ahead.  
22 If you don't want to, don't.

23 WITNESS: I think I'll try to recall the, some of  
24 the sources that we used that would attract all people,  
25 including African Americans. We advertised in, in several St.



1 Louis newspapers, the St. Louis Post Dispatch, the St. Louis  
2 American, the St. Louis Sentinel. I believe the St. Louis  
3 Argus.

4 JUDGE STEINBERG: Try to keep your voice up. We  
5 have a blower going which either you, either you're cool and  
6 you can't hear or you're hot and you can.

7 WITNESS: Okay.

8 JUDGE STEINBERG: So try to keep your voice up.

9 WITNESS: Okay. We contacted some schools in the  
10 St. Louis area, colleges in particular. We contacted the  
11 Broadcast Center which is a broadcast trade school. We posted  
12 toward the last half of the license period job openings at the  
13 headquarters of the Lutheran Church. We used some social  
14 agencies. Lutheran Employment Project is one of them. And  
15 all of these sources would be available to African Americans  
16 as well as any other minority or anyone else.

17 Oh, we also used Broadcasting Magazine. We used the  
18 Lutheran Church's periodical, periodicals to announce several  
19 job openings.

20 MR. HONIG: Now isn't it --

21 JUDGE STEINBERG: Did that complete your answer?

22 WITNESS: That completes my answer.

23 CROSS-EXAMINATION

24 BY MR. HONIG:

25 Q First, isn't it the case that these steps were not

1 done for every position, nor were all of them done throughout  
2 the license term?

3 A That would be correct.

4 Q Now if you would turn to page 6 in your testimony.

5 A Okay.

6 Q You state regarding the stations, "Because of their  
7 financial problems, the stations did little or no employment  
8 advertising during the first several years of the license  
9 term." Did you mean by that statement that the station  
10 couldn't afford the advertising or that the station didn't  
11 need to do the advertising, because they weren't going to be  
12 hiring very many people? Or did you have some other meaning?

13 A Combination of both. Fewer hirings and fewer  
14 resources.

15 Q Now instead of doing employment advertising --  
16 first, when you're speaking of employment advertising, you  
17 mean putting a paid ad in the newspaper for job openings --

18 A Yes.

19 Q -- or Broadcasting Magazine? They make you pay.

20 A Correct.

21 Q Did you take any alternative steps that wouldn't  
22 have cost anything? Such as sending notices to social service  
23 agencies other than the cost of a stamp?

24 A We encouraged -- our, our employees referred some  
25 people. Concordia Seminary, the school that we're adjacent

1 to, sent people. I can't recall during that period whether or  
2 not the Lutheran Church actually sent broadcast applications  
3 or resumes to our station. Likely that they did.

4 Q Is there anything else that you, you did instead of  
5 employment advertising?

6 A To recruit?

7 Q Yeah. During the period when you, you believed that  
8 there were these financial problems.

9 (Pause.)

10 A Not that I recall, no.

11 Q Did you consider just sending, putting notices in  
12 an, in an envelope and putting a stamp on it and sending it to  
13 minority organizations, colleges, other radio stations?

14 A I did not do that, no.

15 Q Did you consider doing it but elect not to, or did  
16 it just not occur to you?

17 A Well, at that time I was not the general manager of  
18 the station. And I did not specifically do the recruiting.

19 Q Do you know why it wasn't done?

20 A I think for the reasons stated. The general manager  
21 felt they had financial problems, and they were fewer job  
22 openings than there were toward the end of the license period.

23 Q Well, when there were job openings, then would  
24 the -- was the station struggling so badly it couldn't afford  
25 the cost of the stamps?

1           A     If I may back up, the Lutheran Church's periodicals  
2 were used during that time frame to advertise for certain  
3 positions. Was the station so poor that it couldn't afford  
4 stamps? I, I would not say that it was that poor, no.

5           Q     Now in your next sentence you state, "Instead the  
6 stations were forced to hire people who learned about the  
7 stations through informal sources and were willing to work for  
8 low pay." Now when you say low pay do you mean low -- well --

9           JUDGE STEINBERG: Why don't you ask what he meant,  
10 meant by that?

11           MR. HONIG: What, what --

12           JUDGE STEINBERG: Than trying to put words in his  
13 mouth.

14           BY MR. HONIG:

15           Q     -- what do you mean by the term "low pay" as you  
16 used it here?

17           A     In my judgment it would, it would be salaries that  
18 in my estimation would have been below the broadcast norm. at  
19 the time. And salaries that were just lower than, than a good  
20 paying job.

21           Q     Now KFUE was the only radio station or stations that  
22 you worked at since college, isn't that right?

23           A     That is correct.

24           Q     Then you have no knowledge of what the rates of pay  
25 are for competing stations in the market, isn't that right?

1           A     Well, I would say that's not 100 percent right. But  
2 I, I couldn't 100 percent vouch for what the pay of other  
3 radio stations are.

4           Q     You, you really don't know that much about what  
5 other stations pay. Would that be accurate to say?

6           A     Well, I know what some people made at other radio  
7 stations. But I couldn't say across the board that I knew  
8 what all other stations were paying all their employees, no.

9                     (Pause.)

10          Q     Turn if you would to page 7 of your testimony. Now  
11 there at the bottom of paragraph 12 you state, "It was also  
12 helpful for certain secretaries to be familiar with the  
13 Lutheran Church, because part of their job was to contact  
14 pastors to enlist volunteers for 'share-a-thons'." And this  
15 statement was, was being made in the context of Lutheran  
16 background or membership or, or knowledge or faith used  
17 variously as a qualification for jobs at KFYO-AM. First,  
18 what's a share-a-thon?

19          A     Share-a-thon is a on the air event to raise money.  
20 It's kind of a telethon would be a like event.

21          Q     Now what is there about the task of contacting  
22 pastors to enlist volunteers which requires a membership in  
23 any particular religion or even knowledge of any particular  
24 religion?

25                     MS. SCHMELTZER: Your Honor, I would like to make a

1 general objection to this line of inquiry. My objection is  
2 based on NLRB v. Catholic Bishop of Chicago. It's 440 U.S.  
3 490, the 1970 Supreme Court case. My concern is that we are  
4 getting into an area of inquiry that violates the religion  
5 clause in the First Amendment.

6 In NLRB v. Catholic Bishop and also in Corporation  
7 of the Presiding Bishop of the Church of Jesus Christ of  
8 Latter Day Saints v. Amos which is 483 U.S. 327 (1987), the  
9 Court said it is a significant burden on a religious  
10 organization to require it on pain of substantial liability to  
11 predict which of its activities the secular court will  
12 consider religious. The line is hardly a bright one, and an  
13 organization might understandably be concerned that a judge  
14 would not understand its religious tenets and sense of  
15 mission. Fear of potential liability might affect the way an  
16 organization carried out what it understood to be its  
17 religious mission. We think that this inquiry into which of  
18 our positions are religious and require a theological basis is  
19 a direct violation of the religion clauses of the First  
20 Amendment and that it contradicts the free exercise clause and  
21 that it's excessive entanglement of the Government with  
22 religion.

23 MR. HONIG: Your Honor --

24 MR. ZAUNER: Your Honor, the Bureau has, would like  
25 to state a position. Ms. Laden would like to --

1 MS. LADEN: Yes, Your Honor. The cases that were  
2 cited to my knowledge do not involve a broadcast license.  
3 There is a case, Kings Garden, which is cited in the appeal  
4 from the D.C. Circuit 1974 in which the D.C. Circuit makes  
5 clear that the Commission has the right if not the duty to  
6 determine for purposes of broadcast licenses which positions  
7 appropriately require religious training. And that the  
8 inquiry here is doing no more than that and it's authorized  
9 under Kings Garden.

10 MR. HONIG: Two, two -- three points, one of which  
11 was just made. And I concur fully in what Ms. Laden has just  
12 said. Kings Garden is expressly referred to in this witness's  
13 testimony at paragraph 19. I think that that case does  
14 control. If, if the argument is being made that, that the,  
15 the fruits of this line of inquiry aren't appropriate for the  
16 decision to be, to be made, I think that the inquiry should go  
17 forward, should get this in the record, and let this be a  
18 subject for findings and particularly for conclusions.

19 This is perfectly appropriate legal argument on  
20 which reasonable people can disagree. But I see no burden on  
21 the Church by simply having questions and answers on this  
22 subject. If there were some need for constitutional  
23 protection on that, that should have been -- just by this act  
24 of questioning, that should have been asserted earlier instead  
25 of having the testimony that I'm going through cross-

1 examination of contain material which relates to those very  
2 requirements. Since the testimony relates to that, I'm  
3 permitted to cross-examine on it. And at least for the  
4 purpose of getting the testimony out, the argument has been  
5 partly weighed.

6 MS. SCHMELTZER: Your Honor --

7 JUDGE STEINBERG: I don't need any response. I'm  
8 overruling the objection. I -- for the reasons stated by  
9 counsel for the Bureau and counsel for the NAACP. In  
10 addition, the sentence that -- the, the specific objection to  
11 a specific question and the sentence that to which the  
12 question was addressed is the witness's statement, "It was  
13 also helpful for secretaries to be familiar..." etc., etc.  
14 It's proper cross-examination for the, for Mr. Honig to ask  
15 why. Ask to explain. I don't see how that's interfering  
16 with, with any First Amendment religious rights.

17 It's his testimony. It was put in there by him.  
18 And basically you can't have it both ways. You can't put it  
19 in there and then preclude cross-examination. If you didn't  
20 want people to get into this, it shouldn't have been in here  
21 in the first place.

22 MS. SCHMELTZER: If I may respond to that. Your  
23 Honor, we've been -- the Church has been put in a very  
24 difficult position in this case. It has to defend its  
25 licenses. It has a pending application to apply for control



1 of another station. If we were to go all the way up to the  
2 Supreme Court now on a First Amendment argument, this case  
3 would never fought.

4 But we have throughout the depositions maintained an  
5 objection to this line of inquiry. I'm willing to let Mr.  
6 Honig proceed. But I just want to make the point that we're  
7 not waiving that --

8 JUDGE STEINBERG: Okay. No, that's --

9 MS. SCHMELTZER: -- argument.

10 JUDGE STEINBERG: -- that's fine. It's you know,  
11 you know, you preserved your objection. And so you may  
12 continue, Mr. Honig. You lose track of the question?

13 MR. HONIG: No, no, no, no. I, I -- is it your --  
14 some judges don't like this. Some do.

15 JUDGE STEINBERG: Try me. That's all.

16 MR. HONIG: Is it Your Honor's practice to take  
17 brief statements for the record on matters that, that they  
18 argue later?

19 JUDGE STEINBERG: No. No. Just -- let's get on  
20 with the questioning. We can -- this transcript is filled  
21 with brief and not so brief statements that are going to be  
22 argued later. I think the fewer of those the better. Just  
23 make the arguments later. I've ruled. I've ruled in your  
24 favor.

25 MR. HONIG: Okay.